justice both of which are very serious defects which amount to deprivation of jurisdiction."

I share the same view. At any rate the committee did lend its ear to the objection raised to its jurisdiction by the written submission and even if, contrary to the view taken by the judge, the committee proceeded with the inquiry to completion without deciding whether or not it was competent to do so, it has been held, in this appeal, that the proceedings were not invalid by reason of being initiated by the Secretary of the Ministry.

On other aspects of the rules of natural justice, it was further argued that the letter of Dato' Yeap Kee Aik dated October 26, 1966 contained allegations of misconduct against the appellant which were not made the subject-matter of the charges preferred against him, with the result that the Public Services Commission was possibly influenced by extraneous considerations without giving him an opportunity to explain. The question is whether there is a reasonable impression of bias, or a real likelihood of bias: see *Metropolitan Properties Co. v. Lannon.*[1] For my part I am satisfied that the learned judge in no way misdirected himself on this point, and having seen the nature of the charges pursued before the committee and the appellant's explanation, I need say no more than that I have no reason to doubt that neither the committee nor the Public Services Commission was influenced in their decision by anything contained in Dato' Yeap's letter.

As to the complaint against reception of hearsay evidence concerning charges 4 to 8, it was said that the fourth, fifth and seventh charges related to loans which had nothing to do with the appellant's official position, that in the case of the sixth charge there was a letter from the alleged lender, which was never contradicted, stating that no money had passed, and that there was not the slightest evidence to show that the appellant had used his public position for his private advantage. I do not think that, having regard to the explanation given by the appellant regarding these transactions, I should be justified in rejecting the inferences drawn by the committee.

Accordingly this appeal fails and I would dismiss it with costs.

Gill and Ali F.JJ. concurred.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

GOH YOKE v. PUBLIC PROSECUTOR

[F.C. (Ong Hock Thye C.J. (Malaya), Gill & Ali F.JJ.) September 10, 1969]

[Kuala Lumpur — Federal Court Criminal Appeal No. X. 22 of 1969]

Criminal Law and Procedure — Murder — Defence of insanity — Burden of proof on accused — Summing up of trial judge — Medical evidence not explained to jury — Penal Code, s. 84.

Penal Code, ss. 84, 300 & 302 — Murder — Defence of insanity.

This was an appeal against the conviction of the appellant for the murder of his son. On appeal it was argued that the summing up of the trial judge was defective. In his summing up the trial judge told the jury always to apply the standards of a reasonable man and in the course of the summing up he said: "You must always bear in mind that a person is presumed to be responsible for his action and the natural consequences thereof, unless he affirmatively proves that he is entitled to exemption from criminal liability." Later he said "Always bear in mind the question of burden of proof. The burden lies on the prosecution which has got to establish it. The burden on the defence is comparatively light."

Held: (1) for the normal presumption of sanity to prevail over evidence of insanity adduced by the defence, the evidence as a whole must be sufficient to exclude any reasonable doubt regarding the sanity of an accused person pleading unsoundness of mind as a defence;

(2) the burden on an accused person to prove insanity is no higher than the burden which rests upon a plaintiff or a defendant in civil proceedings;

(3) the summing up was therefore defective as the trial judge had failed to explain the medical evidence to the jury;

(4) for the above reasons the conviction and sentence must be set aside and an order made for the appellant to be confined in safe custody pending the order of the Governor of Malacca.

Cases referred to:—

(1) *Director of Public Prosecutions* v. *Smith* [1961] A.C. 290, 327.

(2) *Stapleton* v. *The Queen* (1952) 86 C.L.R. 358, 365.

(3) *Parker* v. *The Queen* (1963-4) 37 A.L.J.R. 3, 11.

(4) *Regina* v. *Wallett* [1968] 2 W.L.R. 1199.

(5) *Yeo Ah Seng* v. *Public Prosecutor* [1967] 1 M.L.J. 231, 234.

(6) *Geron* v. *The Emperor* A.I.R. 1914 Cal. 120, 130.

(7) *Bratty* v. *Attorney-General for Northern Ireland* [1963] A.C. 386, 407.

(8) *Public Prosecutor* v. *Yuvaraj* [1969] 2 M.L.J. 89.

(9) *Sodeman* v. *R.* [1936] 2 All E.R. 1138.

(10) *Chia Chan Bah* v. *The King* [1938] M.L.J. 147.

(11) *Reg.* v. *Terry* [1961] 2 W.L.R. 961, 965-6.

(12) *Jusoh* v. *Public Prosecutor* [1963] M.L.J. 84, 86.

(13) *Reg.* v. *Kemp* [1957] 1 Q.B. 399.

FEDERAL COURT

D.S. Nath for the appellant.

K. Somasundram (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya) (delivering the judgment of the court): On June 8, 1968 two sacks were discovered floating in the Malacca River some distance apart. In one was a headless body with its legs chopped off at mid-thigh. The other contained the missing head and legs. The torso was clothed and in the trousers pockets were found some money, bills and an identity card. The police officer in charge of investigation called at the address so discovered and found one wall facing the air-well of the house spattered with blood. In the kitchen he collected two axes and a chopper. He then arrested the appellant, who was tenant of the premises. The holder of the identity card had been living there, but was missing. He was a son of the appellant, named Goh Hong Koon.

There never was a shadow of doubt that Goh Hong Koon was slain and dismembered by his father. He was last seen alive by two persons, residents in the same premises, on the night of June 5, 1968. They were sub-tenants of the appellant, sharing the back bedroom on the ground floor. The only other bedroom in the house was that used by the appellant and his wife, the deceased's step-mother. The deceased used to sleep on a camp-bed placed against the wall of the open passage-way connecting the two bedrooms. This passage faced the air-well and bathroom. The deceased, who was ill, had been seen sleeping on his camp-bed when the sub-tenants retired into their own room for the night. At about 2 a.m. they were roused from sleep by unusual noises loud enough to awaken a neighbour and kinsman of the appellant living next door. They peeped through a crevice in the plank partition of their room and saw the appellant engaged in severing the legs of the deceased. His camp-bed was missing the next morning. Dr. Gune, the psychiatrist called by the defence, testified that the appellant admitted killing his son.

Such being the evidence at the close of the defence it is plain that the appellant was either guilty of murder or of no offence by reason of unsoundness of mind. Section 84 of the Penal Code reads:—

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

The jury by a majority of 6 to 1 returned a verdict of guilty, with which the judge concurred, and the appellant was sentenced to death. He now appeals to this court.

The only question that can be raised in this appeal concerns the summing-up. The directions given by the judge were copious, extending to 40 pages or over 10,000 words. Unfortunately there was an abundance of riches, much of which, we regret to say, were of little or no relevance except to an academic audience.

The first comment we would make is that directions appropriate to a charge of voluntarily causing bodily hurt resulting in death are not of general application. The facts and circumstances peculiar to each case vary widely. In particular, the subjective test of liability must at times be widely different from the objective. The latter is what an ordinary person would or was likely to foresee: see *Director of Public Prosecutions v. Smith.*[1] That test, of course, was the application of the presumption that every person must be presumed to intend the natural and probable consequences of his acts. Where, however, the accused suffers from a disease of the mind, it is manifest that the objective test of what is foreseeable to an ordinary person suffering from no impairment of reason can hardly apply. Indeed the validity of this general presumption had been rejected by the High Court in Australia since 1952 in *Stapleton v. The Queen*[2] — a view reaffirmed in *Parker v. The Queen*[3] where Dixon C.J. said:—

> "In *Stapleton v. R.* (1952) 86 C.L.R. 358, at p. 365, we said: 'The introduction of the maxim or statement that a man is presumed to intend the reasonable consequences of his acts is seldom helpful and always dangerous.' That was some years before the decision in *Director of Public Prosecutions v. Smith* [1961] A.C. 290, which seems only too unfortunately to confirm the observation ..... Hitherto I have thought that we ought to follow the decisions of the House of Lords, at the expense of our own opinions and cases decided here, but having carefully studied *Smith's* case I think we cannot adhere to that view or policy. There are propositions laid down in the judgment which I believe to be misconceived and wrong. They are fundamental and they are propositions which I could never bring myself to accept ..... I am authorised by all the other members of the High Court to say that they share the views expressed in the foregoing paragraph."

The doctrine stated in *Smith* as binding on all courts in England no longer holds good there, since the Criminal Justice Act, 1967, section 8 of which provides that:—

> "A court or jury, in determining whether a person has committed an offence, — (a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reason only of its being a natural and probable consequence of those actions; but (b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."

See *Regina v. Wallett.*[4]

In *Yeo Ah Seng v. Public Prosecutor*[5] this court had expressed its concurrence with the views of Australian courts. Yet, in the instant case, the discredited doctrine was still pro-

pounded as law to the jury. Speaking of the onus of proof, the judge said (at pages 102-3) as follows:—

"I told you earlier that the onus of establishing the guilt of the accused is on the prosecution. But if the defence raises the plea of insanity the onus is on him. He has to prove to you that at the time he is said to have committed the act he was of unsound mind as understood by law. But I must tell you that the onus on the accused is not as heavy as on the prosecution. It is a much lighter onus on the defence ..... To establish a defence on the grounds of insanity it must be *clearly proved* that at the time of committing the act that accused was labouring under such a disease of the mind as not to know the nature and quality of the act he was doing, or, if he did know, that what he was doing was wrong..... You must also bear in mind that a person is *presumed* to be responsible for his action and the natural consequences thereof, unless he *affirmatively proves* that he is entitled to exemption from criminal liability."

It will be observed that the "lighter onus" — whatever meaning that term might have conveyed to the jury — was given an interpretation having reference to the presumption. They were told that the accused had, clearly and affirmatively, to prove his insanity in order to rebut this presumption. Next, after quoting from the judgment in *Geron v. The Emperor*[6] and warning the jury that "it would be utterly unsafe to admit a defence of insanity upon arguments merely derived from the character of the crime", the judge (at p. 106) went on thus:—

"But what the law requires is that confusion (of the mind) must reach a certain degree so as to impair the cognitive faculties completely."

This, he explained, meant that they had to be "satisfied" of or "find" the mental condition laid down in section 84. The rest of the directions on insanity were, again and again, liberally strewn with references, not only to the presumption that every man is sane, but also the presumption that he is responsible for his acts, "unless", the jury were again reminded, "he affirmatively proves that he is entitled to exemption from criminal responsibility".

About half-way in the summing-up (at p. 109) the judge said:—

"A man must be presumed to be sane until he proves to the contrary. The question, therefore, is not whether the accused was of sound mind but whether he had made out that he was not of sound mind. It is not for the prosecution to prove that the accused was of sound mind. That the law presumes. As far as the burden of proof on the accused is concerned, I might tell you that it is sufficient for the accused to raise a doubt as to *his guilt*. If on the material before you there is a reasonable doubt, and you mark the words 'reasonable doubt', the accused should have the benefit of that doubt. If you are satisfied with the defence or upon consideration of all the evidence are left in a reasonable doubt, then the accused is entitled to an acquittal and in that case you should return a verdict of not guilty."

Finally (at p. 126) the judge reminded the jury of his earlier directions on onus in these terms:—

"But *always*, please, *apply the standards of a reasonable man* and when you decide whether the prosecution has proved its case beyond reasonable doubt always bear in mind that it is only a reasonable doubt. Always bear in mind the question of burden of proof. The burden lies on the prosecution which has got to establish it. The burden on the defence is comparatively light."

All these directions, it will be observed, were closely tied up with the standard of the reasonable man and the legal presumption of his intending the natural consequences of his acts. Of the onus on the prosecution it is true that the directions are impeccable. As regards the "lighter onus" on the defence, however, we regret to say that "comparatively light" was hardly an adequate explanation for the jury, even had they been able to recollect what they were told, about an hour earlier, as set out in the second excerpt from the summing-up above quoted. The emphasis had been on affirmative proof by the defence. How far is "affirmative proof" of insanity consistent with "reasonable doubt" of his sanity? Assuming that the jury were able to appreciate the distinction, it would still appear that the emphasis on affirmative proof could not have been lost on them. Nor was the nature of the doubt sufficient for the defence to succeed explained as it was explained regarding the onus to be discharged by the prosecution. Doubt about his *guilt* and doubt regarding his *sanity* appeared to mean the same thing. If the plea of insanity might reasonably and probably be true, would it not have been sufficient to earn the appellant a verdict of acquittal? This would be in accordance with principle. As Viscount Kilmuir L.C. said in *Bratty v. Attorney-General for Northern Ireland*[7]:—

"Nevertheless, one must not lose sight of the overriding principle, laid down by this House in *Woolmington's case*, [1935] A.C. 462, that it is for the prosecution to prove every element of the offence charged. One of these elements is the accused's state of mind; normally the presumption of mental capacity is sufficient to prove that he acted consciously and voluntarily, and the prosecution need go no further. But if, after considering evidence properly left to them by the judge, the jury are left in real doubt whether or not the accused acted in a state of automatism, it seems to me that on principle they should acquit because the necessary *mens rea* — if indeed the *actus reus* — has not been proved beyond reasonable doubt."

Even where express statutory enactment reverses the ordinary onus of proof — as by section 14 of the Prevention of Corruption Act 1961 — the onus so placed on the defence is no heavier than that required for a party to succeed in a civil suit, that is to say, on balance of probabilities: see *Public Prosecutor v. Yuvaraj*.[8] This recent decision of the Privy

Council is merely another aspect of the principle stated in *Bratty's* case. As Lord Diplock said:—

"In criminal proceedings ..... by an exception to the general rule founded on considerations of public policy, if the consequence of a finding that a particular fact is proved will be the conviction of the defendant, the degree of probability must be so high as to exclude any reasonable doubt that it exists."

The decision in *Yuvaraj* is binding on our courts. Accordingly, for the normal presumption of sanity to prevail over evidence of insanity adduced by the defence, this court holds the view that the evidence as a whole must be sufficient to exclude any reasonable doubt regarding the sanity of an accused person pleading unsoundness of mind as a defence. As regards the degree of proof the law has been quite clear since the Privy Council laid down in *Sodeman v. R.*[9] that "the burden in cases in which an accused has to prove insanity may fairly be stated as not being higher than the burden which rests upon a plaintiff or defendant in civil proceedings". As was stated by the Singapore Court of Criminal Appeal in *Chia Chan Bah v. The King*,[10] "the law does not require an accused person setting up an exception such as insanity as a defence to prove that exception beyond reasonable doubt. It is sufficient ..... if he induces in the mind of the jury a feeling that he probably was insane though the jury may have its doubts whether he really was insane." We feel that in all cases where the defence of insanity is set up a direction to the jury on these lines is much to be preferred.

With respect, we do not think the summing-up quite satisfactory for other reasons as well. Having dealt at considerable length with the evidence for the prosecution, the judge turned to the defence as follows:—

"Now coming to the defence, it is the evidence of the psychiatrist, the relevant parts of which I might read to you."

Then he proceeded to read passages of the expert evidence *in extenso*. This differs but little, in practical effect, from handing a transcript of the medical evidence to the jury, of which Lord Parker C.J. said in *Reg. v. Terry*[11] as follows:—

"The court feels that this is a bad practice and, in an ordinary case, would not be an adequate direction to a jury in regard to the medical evidence. Medical evidence on these matters is difficult to follow and difficult to understand, and it would be quite impossible for a jury in a jury room without any assistance really to understand and appreciate the effect of the evidence ..... Other criticisms made of the summing-up are that the judge did not adequately refer to the ..... family history and matters of that sort."

The reading was interspersed by three comments only, one relating to a possibility of the accused being able to realise what he was doing; next, a reminder to the jury to consider his conduct prior to and subsequent to the killing, and the third in these terms:—

"Please also bear in mind that he was deaf and what the psychiatrist said about persons who are deaf and have paranoid ideas."

A deaf person having paranoid ideas was the only reference made to the nature of the appellant's mental illness. The psychiatrist, however, had said much more, as follows:—

"His replies to questions asked were slightly retarded and slow in response ..... His I.Q. was found to be somewhat low. He displayed a symptom which psychiatrists call a paranoid symptom. A paranoid symptom is used to cover certain group of ideas which are based on hate, love, suspicion, trust, persecution and so on ..... Paranoid psychosis generally occurs in a person's later life ..... A paranoid idea can become a paranoid delusion ..... A paranoid idea gets stronger with the advance in age. It may continue to remain an idea or turn into a delusion."

The psychiatrist had in fact stated what the paranoid delusion was, that "the accused felt that if he did not kill his son, his son would have killed him". That this persecution complex *was a common result of paranoia* was nowhere stated in the directions to the jury. Nor the fact that of two other sons of the appellant one, an elder brother of the deceased, had died incurably insane in the Mental Hospital at Tanjong Rambutan while another, a younger brother, had thrice been admitted into the mental hospital since 1955 and is still there, suffering from schizophrenia.

Had this family taint of mental illness been brought to the notice of the jury, as well as the fact that this brutal murder was motiveless — being due to a delusion of having so to protect himself from suffering death at the hands of the deceased — the verdict of the jury might well have been different.

It would appear that the learned judge had also over-looked the judgments of this court in *Jusoh v. Public Prosecutor*[12] and *Yeo Ah Seng*[5] where it was stated that "although motive is not an ingredient in the offence of murder, the jury's attention should have been drawn to the fact that lack of motive was an important indication of insanity". In *Reg. v. Kemp*[13] a devoted husband of excellent character who had made an entirely motiveless and irrational attack on his wife was charged for causing her grievous bodily harm. Devlin J. (as he then was) held that hardening of the arteries which brought about a congestion of blood in the brain was a "disease of the mind" and directed the jury so to find. And in *Bratty's* case Lord Denning said:—

"The major mental diseases, which the doctors call psychoses, such as schizophrenia, are clearly diseases of the mind ..... It seems to me that any mental disorder which has manifested itself in violence and is prone to recur is a disease of the mind."

Paranoia is undoubtedly one of the well-known forms of psychoses, as well as schizo-

phrenia. It is thus defined by *Simpson* on Forensic Medicine:—

"Paranoia, a systemic delusional insanity, may have grave criminal associations. Subjects of the disease shade imperceptibly from those who can perceive the falsity of their frequent misrepresentations of the trivial happenings of the day to those who become obsessed by such delusions and develop persecutory mania. They may single out an individual for assault to redress their grievances, or address themselves in important phrases to prominent people, take action, and allege bribery and corruption among the judges who dismiss such actions. Everyone's hand is against the wretched victim, but his spirit is aggressive and his intellect otherwise sound, so he may secure adherents for his incurable 'righting of wrongs'."

The appellant's case was clearly diagnosed by the only medical expert called as one of paranoia, leading to delusions — a condition liable to worsen with advancing years. Paranoia was the defence. Its meaning cannot be comprehended by the common juror without any assistance and such assistance was not forthcoming.

For the reasons stated above, the conviction and sentence would be set aside and the order of the court made that the appellant be confined in safe custody pending an order of the Governor.

Order accordingly.

Solicitors: *Nath & Co.*

SENG HENG ELECTRICAL v. CHUA LEN TENG

[F.C. (Ong Hock Thye C.J. (Malaya) Ali F.J. & Yong J.) September 10, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 28 of 1969]

Practice and Procedure — Appeal — Question of fact — Whether appeal judge can substitute his own opinion for that of the trial magistrate.

The appellants had brought an action to claim the sum of $943 for an electrical installation and a plumbing job. The respondent denied that the work was done at his request, his case being that if any contract was made it was between the appellants and the building contractor. The learned magistrate found for the appellants, but his decision was reversed by the High Court on appeal.

Held, allowing the appeal: the appeal judge was not justified in substituting his own opinion for that of the magistrate where the credibility or reliability of one or more witnesses has been in dispute and where a decision on these matters has led the trial magistrate to come to his decision as a whole; therefore the appeal must be allowed and the judgment of the learned magistrate restored.

Cases referred to:—

(1) *Benmax* v. *Austin Motor Co. Ltd.* [1955] A.C. 370, 375.

(2) *Thomas* v. *Thomas* [1947] A.C. 484, 487-8.

FEDERAL COURT

D.A. Devadason for the appellants.

H.B. Ball for the respondent.

Ong Hock Thye C.J. (Malaya) (delivering the judgment of the court): On June 9, 1969 we allowed this appeal and restored the judgment of the learned magistrate at Malacca. We now state the grounds of our decision.

On June 1, 1955 Y.Y. Chang Construction, a firm of building contractors, agreed to build a house for the respondent at the price of $13,000, inclusive of all fittings and electrical installations. The house was completed in November and on the 26th of that month the tenant to whom it was let entered into occupation.

The electrical installation had been carried out by the appellants, together with a minor plumbing job, for which a balance of $943 remained unpaid. This sum was claimed from the respondent in the magistrate's court at Malacca on the ground that the work had been done at his request. The respondent's defence was a denial, his case being that, if any contract was made, it was between the appellants and the building contractor. The magistrate found for the appellants, but his decision was reversed by the High Court on appeal. The appellants then appealed to this court.

Plainly the question to be determined in the action was a question of fact, depending on the view of the trial court as to the credibility of the witnesses. Not only did the learned magistrate believe the appellants, but he also took into particular consideration the evidence of Mr. Fernandis "a responsible and senior Government official", who was an independent witness. The latter had been approached by the appellants to use his good offices to obtain payment and accordingly had seen both parties to arrange a settlement. He testified that he had been told by the respondent of the contractor absconding, which had put the respondent in difficulties; however "he would try to settle by raising a loan — no amount was mentioned". The respondent admitted meeting Mr. Fernandis but denied having spoken to him as alleged. He was unable, however, to explain why Mr. Fernandis should so testify against him, nor did he tell the court what explanation he gave Mr. Fernandis for denying liability. It is not surprising, therefore, that the learned magistrate preferred to believe the appellants and their witnesses.

The learned judge, however, took the view that Mr. Fernandis had erred as to the date of his interview with the respondent, and on that account his testimony was untrustworthy, since final payment to the building contractors had